

**Before the  
New Hampshire Real Estate Commission  
Concord, New Hampshire 03301**

**In The Matter Of:** **Docket No.: 2013-006**  
**New Hampshire Real Estate Commission v. Cheryl A. Flanders**  
**License No.: 065730**  
**(Adjudicatory/Disciplinary Proceeding)**

**FINAL DECISION AND ORDER**

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Cheryl A. Flanders ("Respondent" or "Ms. Flanders") in Docket Number 2013-006.

**Background Information:**

Respondent Cheryl Flanders failed to disclose on her New Hampshire Application for a License as a Real Estate Salesperson form received at the Commission on June 16, 2009 two criminal convictions from Florida on May 11, 2004 for two misdemeanor offenses for Obstructing or Resisting An Officer Without Violence and Criminal Mischief and the revocation of her nursing license from the Ohio Board of Nursing on January 16, 2004. On February 25, 2013, the Commission's Investigator Ann Flanagan initiated Complaint File No. 2013-006 against Respondent. Subsequent to an investigation, on August 21, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for September 17, 2013.

On Tuesday, September 17, 2013, at 11:12 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present<sup>1</sup> were:

David C. Dunn, Commissioner, Presiding Officer  
Daniel S. Jones, Commissioner  
William E. Barry, Commissioner  
Paul A. Lipnick, Commissioner

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<sup>1</sup> These same Commission members also deliberated and voted on this Final Decision and Order.

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Ms. Flanders was pro se.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:  
Exhibit #1 - Complaint File 2013-006: pages 1-82.
- The Respondent's exhibits: none were introduced.

There were no witnesses present to testify at the hearing:

#### **Findings of Fact:**

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent was first issued a license as a real estate salesperson from the Commission on June 25, 2009. At the time of the allegations, Respondent was licensed as a real salesperson, license #065730, in active status with a license period of June 25, 2011 – June 25, 2013.
2. Respondent had indicated on her New Hampshire Application for License as a Real Estate Salesperson received at the Commission on June 16, 2009 in answer to question #5: "Have you ever been refused a real estate license or any other business license or had any such license suspended or revoked? If so, by whom and when?" and Respondent answered "No". However, on January 16, 2004 the Ohio Board of Nursing issued Order #969, Case #'s 03-0963, 03-1133, involving numerous drug violations resulting in the revocation of Respondent's Ohio nursing license. (Notice of Hearing, paragraph 4C)
3. Respondent indicated on her New Hampshire Application for License as a Real Estate Salesperson received at the Commission on June 16, 2009 in answer to question #8: "Have you ever been convicted of a misdemeanor or felony offense? If yes, contact the Commission office

at (603) 271-2703 for an Arrest and Conviction Form or obtain a copy from the Commission's website at [www.nh.gov/nhrec](http://www.nh.gov/nhrec)". Respondent answered "Yes" to this question; however, Respondent only disclosed a DUI conviction on December 29, 2006 in New Hampshire, but Respondent did not disclose any criminal convictions in Florida. (Notice of Hearing, paragraph 4D)

4. The Commission Investigator Ann Flanagan received anonymously a copy of a ten page background report for Cheryl A. Flanders on July 10, 2012, which included a picture of the Respondent along with information on Respondent's criminal convictions in Florida and the revocation of Respondent's nursing license from the Ohio Board of Nursing. (Ex. 1, pages 27-36)

5. On September 10, 2012, Investigator Flanagan sent an e-mail to Respondent with the background report received at the Commission on July 10, 2012, stating, "Attached is what was sent to us anonymously. Specifically, start at page 6 at the bottom. It indicates several criminal convictions in Florida, a revoked nursing license in Ohio, and a judgement" (Ex. 1, page 26).

6. Respondent e-mailed Investigator Flanagan on September 10, 2012 stating, "Thank you. Some of this is not even me-the picture is obviously me but the name under the picture is wrong. Boy people sure do have a lot of time on their hands. Thanks for sending it to me though." (Ex. 1, page 26)

7. Respondent testified at the hearing that the picture in the background report was her, but the name below the picture is not her and she never lived in San Francisco, CA, and that was what she was referring to when she stated in her reply e-mail to Investigator Flanagan on September 10, 2012 that some of the background report was not even her.

8. Investigator Flanagan stated that the e-mail exchange that took place on September 10, 2012 was subsequent to a telephone conversation between Investigator Flanagan and the Respondent. Investigator Flanagan stated that she informed Respondent by telephone that the Commission received a background report anonymously about the Respondent which included criminal convictions in Florida, a revocation of nursing license in Ohio, and a judgement, and stated that she would send the Respondent the report via e-mail. Investigator Flanagan stated that during

the telephone conversation Respondent denied having any criminal convictions in Florida or having her nursing license revoked by the Ohio Board of Nursing.

9. Respondent admitted at the hearing that she denied having any criminal convictions in Florida and having her nursing license in Ohio revoked during her telephone conversation with Investigator Flanagan because the events took place 22 years ago and she thought it was taken care of and it wasn't evidently taken care of.

10. Investigator Flanagan stated that Respondent did not state that the criminal convictions and revocation of her nursing license had taken place 22 years ago during their telephone conversation.

11. Investigator Flanagan contacted the Ohio Board of Nursing by telephone and by comparing dates of birth and social security numbers on file determined that it was in fact Respondent whose nursing license was revoked in Ohio. (Notice of Hearing, paragraph 4B)

12. Respondent testified that she answered "no" to question #5: "Have you ever been refused a real estate license or any other business license or had any such license suspended or revoked? If so, by whom and when?" on her application for a salesperson license in June 2009, because she was under the understanding that a nursing license is a professional license and not a business license.

13. The Ohio Board of Nursing issued Order #969, Case #'s 03-0963, 03-1133 on January 16, 2004 permanently revoking Respondent's nursing license. The Ohio Board of Nursing notified Respondent of the Order of Summary Suspension and Notice of Opportunity for Hearing via certified mail and the Order and Notice was personally served by an agent of the Ohio Board of Nursing to Respondent. (Ex. 1, pages 43-50)

14. Respondent testified that she did not receive the Order of Summary Suspension and Notice of Opportunity for Hearing from the Ohio Board of Nursing, and that she never became aware

of the disciplinary action by the Ohio Board of Nursing until she received the Complaint File No. 2013-006 from Investigator Flanagan.

15. Respondent testified that she also had a nursing license in New Hampshire, Massachusetts, Florida, Texas, Nevada, and California, so she moved around a lot. Ms. Flanders testified that she moved from Ohio and knew about the revocation of her Ohio nursing license.

16. Respondent testified that she had no idea that the two criminal convictions in Florida were on her record because it was 22 years ago and the charges were so trivial. Respondent stated that she was pulled over for a traffic violation in Florida in 2004 and the police officer informed her that she had outstanding criminal charges against her. She stated at the hearing that she completed 20 hours of community service and paid a \$200 fine for the convictions, but did not know that she had a criminal record in Florida when she completed her NH Application for License as a Real Estate Salesperson which was received at the Commission on June 25, 2009.

#### **Relevant Law:**

**RSA 331-A:1 Purpose.** It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

**RSA 331-A:2, XV.** "Unprofessional conduct" means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

**RSA 331-A:26, Prohibited Conduct.** – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

I. – Obtaining or attempting to obtain a license by means of fraud, misrepresentation or concealment.

III. – Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, sexual crimes, drug distribution, arson, physical violence, or any similar offense or offenses; provided that, for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended.

XXIX. – Unprofessional conduct defined in RSA 331-A:2, XV.

XXXVI. – Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

**Rea 301.01 Application Form.**

(b) All applicants for licenses under RSA 331-A as salespersons shall supply the following on or with Form 2-RE, in addition to the information required by RSA 331-A:12:

(12) Information regarding any suspension or revocation of real estate licenses or other business licenses.

(15) Convictions for criminal misdemeanor or felony offenses.

**Rulings of Law:**

The Commission makes the following findings by a preponderance of the evidence:

1. The Respondent attempted to obtain a license by means of concealment and was dishonorable when she failed to disclose on her New Hampshire Application for a License as a Real Estate Salesperson form received at the Commission on June 16, 2009, two criminal convictions from Florida that occurred on May 11, 2004 for two misdemeanor offenses for Obstructing or Resisting An Officer Without Violence and Criminal Mischief and the revocation of her nursing license from the Ohio Board of Nursing on January 16, 2004, in violation of RSA 331-A:26, I; RSA 331-A:26, XXIX; and Administrative Rule Rea 301.01(b)(12) and (15). (Notice of Hearing, paragraph 5).

**Disciplinary Action:**

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS ORDERED that the Respondent's real estate license is SUSPENDED for sixty (60) days from the date of this order and shall not be reinstated until further order of this commission. Within seven (7) days from the effective date of this order, Respondent will surrender her real estate wall license and pocket ID card.

IT IS FURTHER ORDERED that the suspension shall remain in effect until further order of the Commission. Prior to any request to lift the restriction the Respondent must meaningfully complete and show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Ethics by submitting to the Commission an affidavit of the completed course (this continuing education course is to be completed by classroom delivery

method only and is not to be counted towards Respondent's continuing education requirements for renewal of license), and the Commission must receive a letter of recommendation from her counselor, and a letter from her principal broker notifying the Commission that he or she is aware of Respondent's criminal convictions in Florida and the revocation of her Ohio nursing license and the findings of this Order within sixty (60) days of the effective date of this Order.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

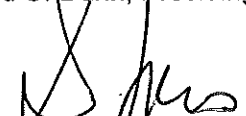
IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

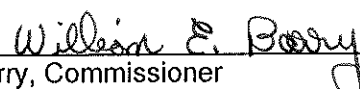
IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.

  
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David C. Dunn, Presiding Officer

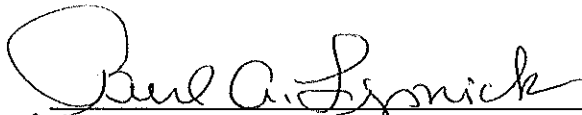
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Daniel S. Jones, Commissioner

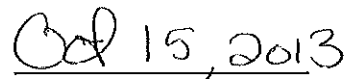
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William E. Barry, Commissioner

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Paul A. Lipnick, Commissioner



Date

\*\ James R. Therrien, Commission member, (case evaluator) recused.